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E. ROBERT SEAVER, C[illegible]

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1970

No. 48 Original

STATE OF MISSISSIPPI ..... *Plaintiff*

VS.

STATE OF ARKANSAS ..... *Defendant*

RESPONSE TO MOTION TO FILE COMPLAINT, MOTION TO DISMISS, AND BRIEF IN SUPPORT THEREOF

JOE PURCELL
Attorney General

MIKE WILSON
Deputy Attorney General
Justice Building
Little Rock, Arkansas 72201

Attorneys for Defendant

TREVATHAN PRINTING COMPANY, NEWPORT, ARKANSAS

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RESPONSE TO MOTION TO FILE COMPLAINT, MOTION TO DISMISS, AND BRIEF IN SUPPORT THEREOF

RESPONSE TO MOTION TO FILE COMPLAINT

The State of Arkansas, by and through the Attorney General, for its response to the motion for leave to file complaint by the State of Mississippi, respectfully states:

1. That it denies that there exists between the states of Arkansas and Mississippi any dispute over the boundary between those states.

2. That it denies this court has original jurisdiction of this action for the reason that there is no justiciable case or controversy.

3. That it admits an action is presently pending in the Chancery Court of Chicot County, Arkansas, styled

"Arkansas Land and Cattle Company v. Anderson-Tully Company, et al, Case No. 10177," but denies that the lands therein are or have been subject to the jurisdiction, dominion, or control of the State of Mississippi.

4. Responding further, the State of Arkansas states that Arkansas Land and Cattle Company and Anderson-Tully Company, et al, are private parties which do not partake of the sovereignty of either the State of Arkansas or the State of Mississippi, and that those parties are the real parties in interest in this cause, as well as the cause now pending before the Chicot Chancery Court.

WHEREFORE, the State of Arkansas respectfully prays that this Court refuse to take original jurisdiction of this cause for lack of a justiciable issue between the nominal parties and for lack of a case or controversy between the nominal parties; and that the motion for leave to file complaint be denied.

JOE PURCELL
Attorney General

MIKE WILSON
Deputy Attorney General
Justice Building
Little Rock, Arkansas 72201

MOTION TO DISMISS

The State of Arkansas, by the Attorney General, respectfully moves this court to dismiss the complaint of the State of Mississippi, and as grounds for its motion to dismiss, alleges and states:

I.

That in November, 1966, a partnership, known as Arkansas Land and Cattle Company, filed suit in Chicot County, Arkansas, Chancery Court to quiet its title to certain lands in Chicot County, naming Anderson-Tully Company and others as adverse claimants. Anderson-Tully Company moved to dismiss the complaint, alleging that the Chicot Chancery Court lacked jurisdiction over the subject matter of the complaint. A protracted hearing was held on the motion to dismiss and extensive testimony taken. The Chancery Court found that it lacked territorial jurisdiction of the case and Anderson-Tully Company's motion to dismiss was granted. An appeal was taken to the Supreme Court of Arkansas by Arkansas Land and Cattle Company, where the Supreme Court found, on April 13, 1970, that the Chicot Chancery Court did, in fact, have territorial jurisdiction of the subject matter, and, therefore, reversed and remanded the case to the Chicot Chancery Court, 248 Ark. ——, 452 S.W. 2d 632. No appeal or writ of certiorari was taken to the United States Supreme Court from the decision of the Arkansas Supreme Court and accordingly, the Arkansas Supreme Court issued its mandate on May 1, 1970. The Chicot Chancery Court then entered judgment on the mandate on November 10, 1970, allowing Anderson-Tully Company twenty days in which to plead further. See Ex. A Attached

II.

That the Courts of the State of Arkansas have jurisdiction to determine the extent of their territorial jurisdiction,

and have properly determined that the subject lands are within the territorial jurisdiction of the Chicot Chancery Court.

III.

That this Court has no jurisdiction to enjoin or stay the proceedings in the Chicot Chancery Court, such action being between private parties who are not before this court.

IV.

Responding further, the State of Arkansas denies that disputes have arisen between law enforcement officers of the State of Mississippi and the State of Arkansas; it denies that there is any uncertainty as to the collection of taxes and ownership of the subject lands and minerals in the area; and it denies that it is desirable that the state boundary be fixed and determined by this Court, there being no dispute as to the location of the state boundary.

WHEREFORE, the State of Arkansas prays that the complaint of the State of Mississippi herein be dismissed on its face; or, in the alternative, that proof be taken on this motion to dismiss and that the motion be sustained; that this Court refuse to enjoin proceedings before the Chicot Chancery Court; for their costs and for all further and general relief.

Respectfully submitted,

STATE OF ARKANSAS

JOE PURCELL
Attorney General

MIKE WILSON
Deputy Attorney General
Justice Building
Little Rock, Arkansas 72201

BRIEF IN SUPPORT OF MOTION TO DISMISS

I.

As shown herein, the States of Arkansas and Mississippi are not the real parties in interest, the real controversy being between two private companies over which company has the better title to the subject lands. In order that a controversy justiciable in this court can be held to exist, something more must be brought forward than the interest of private citizens. *Louisiana v. Texas,* 20 S. Ct. 251, 176 U.S. 1, 44 L. Ed. 347. See also *Fowler v. Lindsey,* 3 U.S. 411, 1 L. Ed. 658, in which this court refused to take jurisdiction of a title dispute between private citizens for lack of substantial state involvement.

II.

It is well settled that all courts are empowered to determine their territorial jurisdiction. *Uhlhorn v. U.S. Gypsum Company,* 366 F. 2d 211, cert. den., 87 S. Ct. 753, 385 U.S. 1026, 17 L. Ed. 2d 674, *Arkansas Land and Cattle Company v. Anderson-Tully Company,* 248 Ark. ——, 452 S.W. 2d 632. It is also established that such determination does not necessarily involve changing or establishing a boundary line between states and that original jurisdiction does not, therefore, lie in this court. *Uhlhorn v. U.S. Gypsum Company, supra.*

III.

It is unnecessary that this court issue a stay of proceedings to the Chicot Chancery Court. As shown above, the only question before that court is a determination of better title to the subject lands, and not the establishment of a boundary between states. The issues there have been joined and are proceeding in an orderly manner to-

ward final disposition. To interrupt this process would be to frustrate the private parties to that action, and would be an unwarranted interference with the courts of Arkansas by this Court.

Respectfully submitted,

JOE PURCELL
Attorney General

MIKE WILSON
Deputy Attorney General
Justice Building
Little Rock, Arkansas 72201

Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Joe Purcell, do hereby certify that I mailed a copy of the foregoing Response to Motion to File Complaint, Motion to Dismiss, and Brief in Support Thereof to Honorable Albioun F. Summer, Attorney General, State of Mississippi, Jackson, Mississippi, Honorable Delos H. Burks, Deputy Attorney General, State of Mississippi, Jackson, Mississippi, and Honorable Mitchell Emmett Ward, Special Counsel to the Attorney General, State of Mississippi, Suite 500, Merchants National Bank Building, Vicksburg, Mississippi, attorneys of record for plaintiff, with postage prepaid attached thereto on this the 7th day of December, 1970.

Joe Purcell

/s/ Joe Purcell
JOE PURCELL

STATE OF ARKANSAS COUNTY OF CHICOT

IN THE CHANCERY COURT
CAUSE NUMBER 10,177

ARKANSAS LAND AND CATTLE COMPANY, PLAINTIFF

VS.

ANDERSON-TULLY COMPANY, CHICOT LAND COMPANY, INC., J. C. SMITH AND GEORGE PINE, DEFENDANTS

ANN SMITH FENTON, THIRD-PARTY DEFENDANT

JUDGMENT ON MANDATE OF
SUPREME COURT OF ARKANSAS

1.

Now on this date is presented to the Court the Mandate

IN THE CHANCERY COURT
CAUSE NUMBER 10,177

ARKANSAS LAND AND CATTLE COMPANY, PLAINTIFF

VS.

ANDERSON-TULLY COMPANY, CHICOT LAND COMPANY, INC., J. C. SMITH AND GEORGE PINE, DEFENDANTS

ANN SMITH FENTON, THIRD-PARTY DEFENDANT

JUDGMENT ON MANDATE OF
SUPREME COURT OF ARKANSAS

1.

Now on this date is presented to the Court the Mandate of the Supreme Court of Arkansas, Cause Number 5-4896, styled, Arkansas Land & Cattle Company v. Anderson-Tully Company, et. al., in the herein captioned action, dated May 1, 1970, filed herein May 4, 1970. It is found that the Clerk of this Court should spread said Mandate of record upon the records of this Court.

2.

Pursuant to said Mandate of the Supreme Court of Arkansas it is found that the tract of land known as Luna Bar, which is a crescent shaped land mass, bounded on the East by the old river channel lying between Luna Bar and Carter Point, Mississipp the thalweg of said channel being the boundary between the State of Arkansas and the State of Mississippi; with all lands lying West of the old river channel between Luna Bar and Carter Point, being situated in the State of Arkansas and those lands lying East of the thalweg of the old river channel between Luna Bar and Carter Point being situated in the State of Mississippi; the body of land known as Luna Bar is a part of Sections 9 and the North Half of Section 16, Township 15 South, Range 1 West, with accretions thereto, said accretions bounded on the East by the

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LAKE VILLAGE, ARK.
71653

old river channel lying East of Luna Bar, between Luna Bar and Carter Point as aforesaid, which channel is Old Spanish Moss Bend, as shown on Map of Reconnaissance of the Mississippi River by Major Charles R. Suter, Corps of Engineers, 1874; on the North and South by a reach of the old river channel commencing at chute of Island 82 in Section 3, thence Westerly through Section 4 to the South boundary of Section 4; thence Southerly through Section 9 and thence South and East through Section 16, to the channel lying between Luna Bar and Carter Point, all of which is in Township 15 South, Range 1 West, Chicot County, State of Arkansas.

3.

Pursuant to the Mandate of the Supreme Court of Arkansas, the Decree of this Court dated May 29, 1968 and recorded in Record Book D-1, Page 378, is vacated, cancelled, set aside, and forever held for naught.

4.

Pursuant to Mandate of the Supreme Court of Arkansas, aforesaid, the Motions to Dismiss filed herein by the defendants, jointly or severally, are hereby overruled, and the defendants are hereby granted twenty days from date hereof to plead further herein.

5.

Pursuant to the Mandate of the Supreme Court of Arkansas, the plaintiffs are hereby awarded judgment against the defendants Anderson-Tully Company, Chicot Land Company, Inc., J. C. Smith and George Pine, jointly and severally, for filing fee in the Supreme Court of Arkansas, $20.00; Transcript costs, $1,891.60; Brief costs, $100.00, a total of $2,011.60; and the defendants aforesaid are awarded judgment against the plaintiffs, jointly and

severally, for Appellee's Supplemental Abstract, the sum of $132.75; which is hereby set-off against the judgment of the plaintiffs against the defendants, leaving a balance due the plaintiffs against the defendants in the sum of $1,872.85, for which garnishment and execution shall issue.

DONE AND ORDERED this aforesaid date.

Dated: November 10, 1970

JAMES MERRITT, CHANCELLOR

Received by Clerk Nov. 12 1970
Entered in Chancery Court
Record 7-1 Page 545 on
11-12 1970
CLARA HENRY, Clerk
By Gladys Hicks D. C.

WILLIAM H. DREW
ATTORNEY AT LAW